

# HOUSE BILL REPORT

## HB 3148

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to investigations of child abuse and neglect.

**Brief Description:** Concerning investigations of child abuse.

**Sponsors:** Representatives Kagi, Darneille and Roberts.

**Brief History:**

**Committee Activity:**

Judiciary: 2/1/06, 2/2/06 [DPS].

**Brief Summary of Substitute Bill**

- Provides that a governmental entity, or its officers, agents, employees, and volunteers, are not liable to alleged perpetrators of abuse or neglect for acts or omissions in the investigation of a report of child abuse or neglect.
- Provides that the duty to conduct a reasonable investigation of child abuse or neglect runs only to the child who is the subject of the referral and is limited to the duty to act reasonably when making a placement decision.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Kirby, Springer and Wood.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell and Serben.

**Staff:** Edie Adams (786-7180).

**Background:**

The child abuse laws impose a duty on the Department of Social and Health Services (Department) and law enforcement to investigate allegations or reports of suspected child abuse or neglect. The Department is required to offer services to a family based on findings of the investigation, and to notify the appropriate court or community agency, including law enforcement if a crime may have been committed against a child. If warranted, the Department may file a dependency petition with the court.

A person who is suspected of child abuse or neglect is provided with due process rights with regard to the investigation process. These rights include the right to receive notice of the allegations and the Department's findings, notice of his or her rights in the process, an opportunity to seek an administrative review and amendment of a finding that the allegation is founded, and judicial review of the final determination by the Department.

Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. In the case *Tyner v. DSHS*, the Washington Supreme Court found that the child abuse investigation statute creates a duty not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse. The court relied on intent language in the child abuse statutes that emphasizes the importance of the family unit and the parent/child relationship in determining that the purpose of the statute is to not only protect the child but also to preserve the integrity of the family. Based on this dual purpose, the court held that when investigating alleged abuse or neglect, the state has the duty to act reasonably with regard to all members of the family, even with regard to a parent who is suspected of the abuse.

There are three types of negligent investigation claims that have been recognized by the courts: (1) wrongful removal of a child from a non-abusive home; (2) placement of a child in an abusive home; and (3) failure to remove a child from an abusive home. In a 2003 case, *M. W. v. DSHS*, (M.W.) the Washington Supreme Court rejected an argument that the child abuse investigation statute creates a cause of action for all physical or emotional harms that may occur during the investigation process.

In *M.W.* the court held that because the cause of action for negligent investigation derives from the statute, the duty is limited to the harm the statute was meant to address. Since the statute's purpose is to protect children from abuse within the home and to protect the integrity of the family, a claim for negligent investigation is limited to negligent investigations that lead to harmful placement decisions. A recent Washington Supreme Court decision, *Roberson v. Perez*, confirmed this holding that a claim for negligent investigation applies only where a faulty investigation leads to a harmful placement decision, such as placing a child in an abusive home, removing a child from a non-abusive home, or failing to remove a child from an abusive home.

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### **Summary of Substitute Bill:**

Legislative findings and intent are provided. The Legislature finds that judicial interpretation of child abuse investigation statutes as imposing both a duty to protect children by removing them from unsafe homes, and an equal duty to protect the family unit even where a parent is the alleged abuser, has imposed potentially irreconcilable duties on the entities that are obligated to investigate child abuse and neglect referrals. The Legislature recognizes the rights of parents and the importance of the family unit, but finds that the paramount purpose of the child abuse chapter is to benefit children. When the child's interests of basic nurture,

physical and mental health, and safety conflict with the parents' interests, the interests of the child should prevail.

The Legislature intends to:

- overrule *Tyner v. DSHS* and other cases in which the courts have held that the child abuse investigation statute creates an implied right of action for parents or other caretakers who are alleged abusers;
- codify the portions of the holdings in *M.W. v. DSHS* and *Roberson v. Perez* that liability is limited to the initial placement decision and not the manner in which the investigation was conducted; and
- have the interests of the parents protected through the judicial review and other procedures established under the child welfare statutes.

The purpose section of the child abuse statute is amended to state:

- When a child's interests of basic nurture, physical and mental health, and safety conflict with the parents' interests, the interests of the child should prevail.
- The safety of the child is the Department's paramount concern when determining whether a child should be placed outside the parents' home during or immediately following investigation of alleged abuse or neglect.

A new provision is added to the child abuse statute relating to a governmental entity's duty to conduct a reasonable investigation and potential liability relating to an investigation of child abuse or neglect. Governmental entities, or their officers, agents, employees, and volunteers, are not liable to alleged perpetrators of abuse or neglect for acts or omissions in the investigation of reports of child abuse or neglect. The duty to conduct a reasonable investigation of child abuse or neglect runs only to the child who is the subject of the referral and is limited to the duty to act reasonably when making a placement decision.

Nothing in the child abuse investigation chapter creates a cause of action or right of review for an alleged abuser beyond the specific rights granted in the chapter, such as notice and the right to seek administrative or judicial review of an agency decision.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill changed a reference in the intent section to state that the Department's paramount concern is the safety of the child. The original bill's intent language had stated that the paramount concern is the appropriate placement of the child.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Child welfare workers are dedicated to trying to make the right decisions in trying to balance the importance of the family unit with the safety of the child. They are caught in a real dilemma when there is conflict between these two duties. One would wish that there was never a conflict between these two duties, but in some cases there are, and it is hard to figure out what to do. If they remove a child from a home they can be sued by the parents. If they don't remove a child from an unsafe home they can be sued.

The current law creates irreconcilable duties on child welfare workers and gives them conflicting charges. It is important to provide the clarification and prioritization of purpose for child welfare workers that this bill provides. The duty to the child must take precedence over the duty to the parents. Parents will not be left without remedies. The current process provides due process protections to parents, including a right to an attorney and an opportunity to challenge the findings of the Department and court rulings. In addition, parents will still have a right to a federal cause of action, and the right to have his or her name cleared in an official proceeding.

Tort cases don't result in accountability and change. Accountability comes from employee discipline, legislative oversight, and agency audits. The purpose of the tort system is to put individuals back into a whole position, not to fix the system.

**Testimony Against:** The language in this bill is too vague and general, and could be used in countless ways against a parent. Parents are the ones who should determine the best interests of a child. Our society operates on the basic premise that a parent has a natural love for a child and will act in a child's best interest, but this bill assumes that is not the case. The government's power to disrupt a family unit should not be taken lightly and ought to be limited to situations of true endangerment. We should all be held to a degree of accountability, and because of the nature of the work of child welfare workers, accountability is even more important for them. Sixty percent of reports of neglect or abuse are determined to be unfounded. It would be heartless to enact a law that would allow families to be torn apart unnecessarily without any recourse or recompense for the parents.

This bill provides a broad-based immunity without any standards. One can appreciate the intent behind this bill in trying to deal with tough calls in close call situations. However, there should be some form of good faith standard before immunity applies. The way the bill is drafted, a child welfare worker would have to do nothing more than open a file and there would be no liability for any harm that resulted.

**Persons Testifying:** (In support) Representative Kagi, prime sponsor; Lisa Erwin, Office of the Attorney General; Cheryl Stephani, Department of Social and Health Services; and Dennis Eagle, Washington Federation of State Employees.

(Opposed) Cynthia Kleke; and Larry Shannon, Washington State Trial Lawyers Association.

**Persons Signed In To Testify But Not Testifying:** None.